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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

**ARTESE BOSTON,
INDIVIDUALLY AND ON
BEHALF OF ALL OTHERS
SIMILARLY SITUATED,**

Plaintiff,

v.

CASHCALL, INC.,

Defendant.

Case No.: '13CV0175 JLS NLS

CLASS ACTION

**COMPLAINT FOR DAMAGES
AND INJUNCTIVE RELIEF
PURSUANT TO THE
TELEPHONE CONSUMER
PROTECTION ACT, 47 U.S.C. §
227, ET SEQ.**

JURY TRIAL DEMANDED

INTRODUCTION

1. ARTESE BOSTON (“Plaintiff”) brings this Class Action Complaint for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of CASHCALL, INC. (“Defendant”), in negligently contacting Plaintiff on Plaintiff’s cellular telephone, in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq., (“TCPA”), thereby invading Plaintiff’s privacy. Plaintiff alleges as follows upon personal knowledge as to herself and her own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by their attorneys.
2. The TCPA was designed to prevent calls and messages like the ones described within this complaint, and to protect the privacy of citizens like Plaintiff. “Voluminous consumer complaints about abuses of telephone technology – for example, computerized calls dispatched to private homes – prompted Congress to pass the TCPA.” *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 744 (2012).
3. In enacting the TCPA, Congress intended to give consumers a choice as to how creditors and telemarketers may call them, and made specific findings that “[t]echnologies that might allow consumers to avoid receiving such calls are not universally available, are costly, are unlikely to be enforced, or place an inordinate burden on the consumer. TCPA, Pub.L. No. 102–243, § 11. Toward this end, Congress found that

[b]anning such automated or prerecorded telephone calls to the home, except when the receiving party consents to receiving the call or when such calls are necessary in an emergency situation affecting the health and safety of the consumer, is the only effective means of protecting telephone consumers from this nuisance and privacy invasion.

Id. at § 12; see also *Martin v. Leading Edge Recovery Solutions, LLC*, 2012 WL 3292838, at* 4 (N.D.Ill. Aug. 10, 2012) (citing Congressional findings on TCPA's purpose).

4. Congress also specifically found that “the evidence presented to the Congress indicates that automated or prerecorded calls are a nuisance and an invasion of privacy, regardless of the type of call....” Id. at §§ 12-13. See also, *Mims*, 132 S. Ct. at 744.
5. As Judge Easterbrook of the Seventh Circuit recently explained in a TCPA case regarding calls to a non-debtor similar to this one:

The Telephone Consumer Protection Act ... is well known for its provisions limiting junk-fax transmissions. A less-litigated part of the Act curtails the use of automated dialers and prerecorded messages to cell phones, whose subscribers often are billed by the minute as soon as the call is answered—and routing a call to voicemail counts as answering the call. An automated call to a landline phone can be an annoyance; an automated call to a cell phone adds expense to annoyance.

Soppet v. Enhanced Recovery Co., LLC, 679 F.3d 637, 638 (7th Cir. 2012).

JURISDICTION AND VENUE

6. This Court has federal question jurisdiction because this case arises out of violation of federal law. 47 U.S.C. §227(b); *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740 (2012).
7. Venue is proper in the United States District Court for the Southern District of California pursuant to 18 U.S.C. § 1391(b) because Defendant is subject to personal jurisdiction in the County of San Diego, State of California.

PARTIES

8. Plaintiff is, and at all times mentioned herein was, a citizen and resident of the State of California. Plaintiff is, and at all times mentioned herein was, a “person” as defined by 47 U.S.C. § 153 (10).
9. Plaintiff is informed and believes, and thereon alleges, that Defendant is, and at all times mentioned herein was, a corporation whose State of Incorporation and principal place of business is in the State of California. Defendant, is and at all times mentioned herein was, a corporation and is a “person,” as defined by 47 U.S.C. § 153 (10). Defendant provides loans to hundreds of thousands of consumers. Plaintiff alleges that at all times relevant herein Defendant conducted business in the State of California and in the County of San Diego, and within this judicial district.

FACTUAL ALLEGATIONS

10. At all times relevant, Plaintiff was a citizen of the State of California. Plaintiff is, and at all times mentioned herein was, a “person” as defined by 47 U.S.C. § 153 (10).
11. Defendant is, and at all times mentioned herein was, a corporation and a “person,” as defined by 47 U.S.C. § 153 (10).
12. At all times relevant Defendant conducted business in the State of California and in the County of San Diego, within this judicial district.
13. At no time did Plaintiff ever enter into a business relationship with Defendants.
14. Plaintiff did not provide Plaintiff’s cellular telephone numbers to Defendant through any medium at any time.
15. Defendants obtained Plaintiff’s contact information through unknown means.

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1 16. On good information and belief, Defendant began contacting Plaintiff with
2 an automatic telephone dialing system (“ATDS”) as defined by 47 U.S.C. §
3 227(a)(1) beginning in December 2011 in order to collect upon an alleged
4 debt alleged to be owed by a third-party.

5 17. This ATDS has the capacity to store or produce telephone numbers to be
6 called, using a random or sequential number generator.

7 18. To date, Plaintiff has received approximately twenty calls from Defendant
8 where Defendant utilized an ATDS.

9 19. The telephone number Defendants called was assigned to a cellular
10 telephone service for which Plaintiff incurred a charge for incoming calls
11 and texts pursuant to 47 U.S.C. § 227(b)(1).

12 20. These telephone communications constituted communications that were not
13 for emergency purposes as defined by 47 U.S.C. § 227(b)(1)(A)(i).

14 21. These telephone communications constituted telephone solicitations as
15 defined by 47 U.S.C. § 227(a)(4).

16 22. Plaintiff did not provide prior express consent to receive calls or messages
17 on Plaintiff’s cellular telephones, pursuant to 47 U.S.C. § 227 (b)(1)(A).

18 23. These telephone communications by Defendants, or its agent, violated 47
19 U.S.C. § 227(b)(1).

20 **CLASS ACTION ALLEGATIONS**

21 24. Plaintiff brings this action on behalf of herself and on behalf of and all
22 others similarly situated (“the Class”).

23 25. Plaintiff represents, and is a member of the Class, consisting of all persons
24 within the United States who received an unsolicited telephonic
25 communication from Defendant wherein Defendant utilized an automatic
26 telephone dialing system (“ATDS”) without prior express consent which
27 message by Defendant or its agents was not made for emergency purposes,
28 within the four years prior to the filing of this action.

1 26. Defendants and its employees or agents are excluded from the Class.
2 Plaintiff does not know the number of members in the Class, but believes the
3 Class members number in the hundreds of thousands, if not more. Thus, this
4 matter should be certified as a Class action to assist in the expeditious
5 litigation of this matter.

6 27. Plaintiff and members of the Class were harmed by the acts of Defendants in
7 at least the following ways: Defendants, either directly or through its agents,
8 illegally contacted Plaintiff and the Class members via their cellular
9 telephones by using an ATDS, thereby causing Plaintiff and the Class
10 members to incur certain cellular telephone charges or reduce cellular
11 telephone time for which Plaintiff and the Class members previously paid,
12 and invading the privacy of said Plaintiff and the Class members. Plaintiff
13 and the Class members were damaged thereby.

14 28. This suit seeks only damages and injunctive relief for recovery of economic
15 injury on behalf of the Class, and it expressly is not intended to request any
16 recovery for personal injury and claims related thereto. Plaintiff reserves the
17 right to expand the Class definition to seek recovery on behalf of additional
18 persons as warranted as facts are learned in further investigation and
19 discovery.

20 29. The joinder of the Class members is impractical and the disposition of their
21 claims in the Class action will provide substantial benefits both to the parties
22 and to the court. The Class can be identified through Defendants' records or
23 Defendants' agents' records.

24 30. There is a well-defined community of interest in the questions of law and
25 fact involved affecting the parties to be represented. The questions of law
26 and fact to the Class predominate over questions which may affect
27 individual Class members, including the following:
28

- 1 a) Whether, within the four years prior to the filing of this Complaint,
2 Defendant or its agents initiated any telephonic communications to the
3 Class (other than a message made for emergency purposes or made
4 with the prior express consent of the called party) to a Class member
5 using any automatic dialing and/or SMS texting system to any
6 telephone number assigned to a cellular phone service;
- 7 b) Whether Plaintiff and the Class members were damaged thereby, and
8 the extent of damages for such violation; and
- 9 c) Whether Defendants and its agents should be enjoined from engaging
10 in such conduct in the future.

11 31. As a person that received at least one telephonic communication from
12 Defendant's ATDS without Plaintiff's prior express consent, Plaintiff is
13 asserting claims that are typical of the Class. Plaintiff will fairly and
14 adequately represent and protect the interests of the Class in that Plaintiff
15 has no interests antagonistic to any member of the Class.

16 32. Plaintiff and the members of the Class have all suffered irreparable harm as
17 a result of the Defendants' unlawful and wrongful conduct. Absent a class
18 action, the Class will continue to face the potential for irreparable harm. In
19 addition, these violations of law will be allowed to proceed without remedy
20 and Defendants will likely continue such illegal conduct. Because of the
21 size of the individual Class member's claims, few, if any, Class members
22 could afford to seek legal redress for the wrongs complained of herein.

23 33. Plaintiff has retained counsel experienced in handling class action claims
24 and claims involving violations of the Telephone Consumer Protection Act.

25 34. A class action is a superior method for the fair and efficient adjudication of
26 this controversy. Class-wide damages are essential to induce Defendants to
27 comply with federal and California law. The interest of Class members in
28 individually controlling the prosecution of separate claims against

1 Defendants is small because the maximum statutory damages in an
2 individual action for violation of privacy are minimal. Management of these
3 claims is likely to present significantly fewer difficulties than those
4 presented in many class claims.

5 35. Defendant has acted on grounds generally applicable to the Class, thereby
6 making appropriate final injunctive relief and corresponding declaratory
7 relief with respect to the Class as a whole.

8 **FIRST CAUSE OF ACTION**

9 **NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION**
10 **ACT**

11 **47 U.S.C. § 227 ET SEQ.**

12 36. Plaintiff incorporates by reference all of the above paragraphs of this
13 Complaint as though fully stated herein.

14 37. The foregoing acts and omissions of Defendant constitutes numerous and
15 multiple negligent violations of the TCPA, including but not limited to each
16 and every one of the above-cited provisions of 47 U.S.C. § 227 et seq.

17 38. As a result of Defendant's negligent violations of 47 U.S.C. § 227 et seq,
18 Plaintiff and The Class are entitled to an award of \$500.00 in statutory
19 damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

20 39. Plaintiff and the Class are also entitled to and seek injunctive relief
21 prohibiting such conduct in the future.

22 **SECOND CAUSE OF ACTION**

23 **KNOWING AND/OR WILLFUL VIOLATIONS OF THE**
24 **TELEPHONE CONSUMER PROTECTION ACT**

25 **47 U.S.C. § 227 ET SEQ.**

26 40. Plaintiff incorporates by reference all of the above paragraphs of this
27 Complaint as though fully stated herein.
28

41. The foregoing acts and omissions of Defendant constitutes numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above-cited provisions of 47 U.S.C. § 227 et seq.

42. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227 et seq, Plaintiff and The Class are entitled to an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

43. Plaintiff and the Class are also entitled to and seek injunctive relief prohibiting such conduct in the future.

PRAYER FOR RELIEF

Wherefore, Plaintiff respectfully requests the Court grant Plaintiff and The Class members the following relief against Defendants:

FIRST CAUSE OF ACTION FOR NEGLIGENT VIOLATION OF THE TCPA, 47 U.S.C. § 227 ET SEQ.

- As a result of Defendant's negligent violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for herself and each Class member \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).
- Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.
- Any other relief the Court may deem just and proper.

SECOND CAUSE OF ACTION FOR KNOWING/WILLFUL VIOLATION OF THE TCPA, 47 U.S.C. § 227 ET SEQ.

- As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for herself and each Class member \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

- Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.
- Any other relief the Court may deem just and proper.

TRIAL BY JURY

44. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Dated: January 10, 2013

Respectfully submitted,

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